The Comparative Study of Offer Revocation in Iran’s Law and International Convention on Sale and Principles of International Contracts

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Abstract

Nowadays, international commerce needs contracting parties’ assurance of doing Commitments which they want. In this case, commercial exchanges take speed and security and holding international contract will increase. One of the assurance’s cases is that when a person wants to do something and declares it should adhere to his commitment and this offer is in 2 forms. Either the person obligates himself to do his commitment clearly or he doesn’t create any obligation for himself. A question maybe raised here that whether a person can revoke from his commitment or not? Revocation of offer means that a person can revoke its credit by his will and no legal or contractual phenomenon can prevent him. Although the revocation’s possibility of simple offers in most legal systems is accepted, revocation’s possibility of firm offers is strongly disagreed. The present research studies the nature of revocation in Iran’s law and Vienna convention and principles of international commercial contracts with the aim of resolving the present ambiguities in the internal system.

Keyword: offer, simple offer, firm offer, revocation of offer.
Introduction

In spite of the importance and the effect of offer in forming the contracts, there is no correct definition of it in our religious jurisprudence and civil law. But, everybody reaches an agreement in the offer definition and that is: ((offer is the declaration of one’s will that invites the contract party on a specific basis to do a transaction so that if the suggestion is accepted by the party, he is obligated (bound) to adhere to its provisions whether the suggestion refers to a certain person or everybody)). The time of effect and the appearance of validity for offer is one of the important subjects in this case and specifying such time is important due to these two reasons:
A) because by specifying this moment we two can say that the addressee of the offer can accept the offer and the offeror is bound to its provisions in case of holding contract.
b) The offeror can change the terms of his suggestion or can replace a new offer or gives up holding the contract till the offer has validity and legal influence. Proposing this question that whether we can change the terms of offer or revokes it, is only possible when the offer has enough validity according to the law.

In the legal doctrine of Iran, although there are scattering hints about specification and thoroughness of offer just one of the jurists studies it classically: he introduces its thoroughness as mentioning all fundament elements of contract by distinguishing between thoroughness and specification of offer. It is evident that if after the offer, acceptance joins to it, the contract will be completed and respect and adherence to it is necessary. A discussion will be raised here: in the interval between offer and acceptance, what is the situation of offer? Is it returnable?

Different interpretations about aforementioned discussion in Iran’s law include: revocation, withdrawal, restoration and cancellation of offer that is reminded as revocation or withdrawal in foreign legal contexts. Revocation of offer means that a person can eradicate its validity just by his will and no legal or contractual phenomenon can prevent him. Although the revocation’s possibility of simple offers in most legal systems is accepted, revocation’s possibility of firm offers is strongly disagreed. The study of this issue in Iran’s law shows the existence of 2 mutual views: the first view knows offer as the firm and irrevocable one and the second knows it as revocable everywhere. Although we want the sanction for it in the case of revocation.

The definition of offer in Iran’s law

One of the jurists defines offer as: ((offer is the declaration of one’s will that invites the contract party on a specific basis to do a transaction so that if the suggestion is accepted by the party, he is obligated to adhere to its provisions whether the suggestion refers to a certain person or everybody. Another group believe that ((offer is an actually written contract by stated will and we cannot form a contract till the offer is not certain)).

Also, some believe that: ((In civil law, there is no definition of offer and also there is no text in religious jurisprudence, but jurisconsults have different opinions in different contracts. For example in the sale definition, they know offer as the written intention of render and believe that offer should be prior to acceptance. In any contract, the first intention which is stated is offer)).

Some stated that: ((In contractual relations, the written intention of the inventive party whether it...
includes the suggested concept or the acceptance concept is called “offer”. For forming any contract, logically we need one of the contracting parties to pioneer and offer a suggestion. If this suggestion is conclusive and serious, specifies the necessary term of the future contract and its addressee is certain, the suggestion is a contract from the legal point of view that is called ((offer)) . In Iran’s law, there is no specific and precise criteria about the definition of offer, its requires and the condition of its discrimination.

The definition of offer in international commerce

Because this thesis pays attention to the comparison of this subject in Iran’s law and international commerce, the discussion of offer and acceptance in legal literature is overindulged and the formality aspect of it is increased. The contract is a set of the agreement of the parties to accept a transaction offer and acceptance are 2 essential parts of a contract and they are not construable and imaginable and offer without acceptance and acceptance without offer is not noticeable.

Kinds of offer from the view point of revocation capability

The main effect of offer is that it creates a special ability for his addressee so that he accepts its content and realizes the contract with all its effects before implementing this option and accepting the suggestion, undoubtedly the announcer of offer in not bound to the content of contract and doesn’t found the final commitment. Also after the acceptance, if it is done on time and has the necessary terms, there is no doubt in creating commitment for the 2 parties. But what is discussed here is the answer to this important question that whether the announcer of offer has any obligation to keep it or not before acceptance and is bound to his suggestion or is free in revocation of it and can eradicate the entity and spoils the contract’s plan. However, if revocation stops compromise, can it be responsible of the loss that is the result of this illegitimate action? And that offer is divided in 2 kinds; simple offer and firm offer; of course the jurists offer another division of offer.

The nature of simple offer

Nowadays, most transaction occurs between those persons who don’t live in one place. The acceptance of most suggestions also needs deliberation and study. So, there is a large distance between offer and acceptance. In this distance, the party thinks about its interest and loss. He regularizes his commercial situation and makes it ready for the transaction. He may reject other similar suggestions by trusting what he studies; He may order something for fulfilling the future commitment; He may reject other similar suggestions by trusting what he studies; He may order some things for fulfilling the future commitment; He may get credit from the bank and sustains high expenditure with a legal hope. Now, if the announcer of offer spoils the promise, is it not just that he compensates the disorder’s loss in the commercial situation of his party? And is the society indiscriminate and heedless of the disorder in commercials relations and spoiling the trust that is the essence of these transactions? In fact, the relation of offer to others rights and undesirable effects of revocation from suggestions and social bases of this relation is the right in
which it poses the issue of obligation regarding the offer and responsibility of announcer’s repent and draws the legal discussions as a means of the need’s obviation.

**Offers specifications**

The main subject in the realization of offer is to recognize the specifications of its properties because offer takes legal appearance and enters the legal world. The main specifications of offer include: decisiveness, thoroughness and specification of offer’s addressee which will be studied during 3 discussions.

**Decisiveness of offer**

One of the most important properties of offer that is stated as the first specification of offer is the decisiveness of offer. It means that offer explains the true intention of the person (offeror) so that the offeror states the legal action which is created in the fourth level in the mind after 4 levels of forming will in the mind. It is obvious that offeror has no option and the contract will be formed as soon as the other party accepts it. So any constraint in offer that gives option to the offeror in the contract is opposed to the decisiveness of offer, like to assign the formation of contract by his will, or keeps the right for changing price or choosing contracting party for himself. Iranians jurists necessitate decisiveness element of offer. One of the jurists gives a detailed discussion about elements and specifications of offer. By mentioning some examples of claims in French courts about offer to the public, he concludes that implied terms in offers to the public don’t except them from decisiveness element, rather it is enough that offeror is bound to the clear and implied terms of his saying and cannot change it by his will. For example, a person who issues an statement to rent his property and specifies the price and terms of renting clearly, he keeps this right implicitly that whenever inappropriate persons want to rent the property, he withholds it. The jurist knows the above rule practicable wherever that the addressee is important for the offeror. It should be mentioned that the issue of offer’s decisiveness is seen in Iran’s juridical procedure with this sense that offer is decisive when the contract is formed by its acceptance. Provisions of Article 14 of international convention on sale considers 3 main terms to know a suggestion as offer that one of them is decisiveness of offer. From the convention point of view, whenever the suggestion is decisive and without any constraint that the contract is formed immediately after its acceptance and commitments arising from it are made, offer is realized.

**Revocation of simple offer in Islamic law**

In jurisprudence, simple offer doesn’t create any contractual responsibility because in jurisprudence, the concept of “compromise” is insisted more. And compromise is not created before the annexation of acceptance to offer so, no commitment will not be created if these two wills are eradicated somehow before the creation of compromise and agreement. Those who don’t regard offer obligatory before acceptance insists more on the concept of “compromise”: they say compromise is occurred when 2 wills wants the same thing in a certain moment, otherwise, when one of the will is eradicated at the time of annexation, other will doesn’t make any effect. In other word, the relation and contact of the 2 wills creates
obligation not each of them. We can conclude that if the announcer of offer revokes of his will before the acceptance or dies or becomes mad, compromise will not occur. Furthermore, it is said that in society, the presence of right and duty have relationship with each other. So, we cannot imagine that commitment creates for any person but the right doesn’t create against it. On the other hand, we cannot create any right without a person’s satisfaction on the basis of will principle. The meaning of obligation’s creation for the announcer of offer is that its addressee has any right.

**Revocation of simple offer in Iran’s civil low**

Some said that offer gives a right to its addressee’s party upon which the contract can be completed and commitments of offer can be created. So, due to this right, offeror is bound. From others statement, it can be concluded that the obligation of any party to the contract is created by his will, but they don’t recognize offer clearly as obligatory. Others didn’t consider it possible to withdraw offer before acceptance, but they didn’t state their opinion because they were afraid of facing with consensus. As some writers pointed, this discussion is related somehow to this general question that whether unilateral obligation can create any commitment or obligation is the special effect of compromise. Nevertheless, it seems that offer is not a complete unilateral obligation. A person who wants to from a special contract writes its provision as one of the 2 appropriateness of contract by means of offer: It means that his commitment depends on the acceptance of other party. So, before the acceptance, the commitment which is created by offer is not justified. About keeping offer, there is no additional commitment in order that discussion about its effects is useful. This claim that “the contract is created by combining 2 independent unilateral obligations” is opposed to the provision of contract’s will and article 183. However, if offer is independent unilateral obligation, the effect of contract should be created from that moment, while in our law acceptance to the past has no effect and effects of contract will be created after that. Therefore, regardless of unilateral obligations effect in creating obligation, since the announcer of offer has no commitment about keeping his will ,We cannot bound him to offer. Revocation of offer prevents compromise and acceptance after it has no effect. Nowadays, they accepted that person in applying right may commit crime; for example, a merchant gives a deceptive suggestion to his rival to disturb his work and makes him busy in the preparation of transaction.

**Revocation of simple offer in the principles of international commercial contracts**

Generally offer can be withdrawn. Article 2-1-3 of international commercial contracts about withdrawal of offer prescribes that(( 1-offer is dominant when addressee of offer receives it .2-offer can be taken back when the request of retaking will be received by addressee of offer before offer or at the same time even in the case that offer is decisive and cannot be withdrawn)).

It is important to specify the time when offer is dominant; because in this way the exact time that from then on addressee of offer can accept offer, will be specified and thus the offeror is bound against the proposed contract. The other reason is that until that time offeror is free to change his mind and decides not to form a contract or replaces primary offer with a new one, regardless of the fact that his intention was that offer can be withdrawn or not. The only term in this case is
that addressee of offer knows the intention of offeror about the change of offer before being aware of the primary offer or at the same time with it. In the second clause of above article, the mentioned subject will be clear that we should make a distinction between taking back and withdraw of offer: before the time that offers is dominant. It can be taken back any time; but this fact that whether we can withdraw of it or not is considered just when offer is dominant and Article 2-1-4 prescribes that ((1-before the formation of contract, we can withdraw offer in the case that mentioned person receives the withdrawal of offer before sending acceptance from addressee of offer. 2-But we cannot withdraw offer A) if offer shows that it cannot be withdrawn whether a fixed time is specified for acceptance or in other way or B) if it is sensible and common for the addressee of offer to refer to offer as the one which cannot be withdrawn and the addressee of offer acts by relying on offer))

**Revocation of firm offer**

In the past time human societies didn’t have today’s industrial and communicational complexities and most of transactions and industrial relations were formed by the presence of transactors. They formed their contracts by verbal negotiations and transaction case was traded in the same meeting. So the subject of firm offer and revocation of offer was not important due to the quick nature of these transactions but nowadays in the era that communication is done easily and complex and big transactions are replaced by the past simple transactions and the need to assess and evaluate each special transaction before its realization is clear, the theory of firm and irrevocable offer because important. Due to the vast contracts that are formed today at international level, the necessity of studying this issue will be cleared more. Specifying this issue especially according to Iran’s civil law which is based on Imamiye jurisprudence is very important, because most of Imamiye jurisconsults judge on the revocation of offer’s permission before the acceptance. Due to the fact that revocation of firm offer in Islamic legal system and internal law is a new discussion, there are not many provisions and criteria about it and this subject is analyzed in separate cases and speeches in the comparative study.

**Revocation of firm offer in Islamic law**

According to the Islamic jurisprudence, No legal effect won’t exist until other party’s satisfaction of acceptance for offer is made. Therefore, offeror has the right of withdrawal and revocation any time before acceptance. This theory is accepted undoubtedly by Imamiye, shafee and Hanafi jurisprudence religions. These legal religions believe that the announcer of offer doesn’t create any commitment unconditionally rather he issues conditional offer which is bound to the acceptance of contractual party so, no commitment will not exist until the above term is created and the above offer is suggestive which can be revoked at any time? On the other hand, Maleki jurisconsult believes that the announcer of offer cannot withdraw his offer before the acceptance of addressee. So, offeror is bound to the provisions of his offer and he has revocation right of offer just in the case that the other party avoids it or transaction meeting is over and no time is specified for the absence of withdrawal. Therefore, if offeror stipulates in his offer that he remains up to 3 months upon offer he cannot revoke his offer during this time. The reasoning of Maleki jurisconsults is that the announcer of offer creates the right of acceptance and ownership.
for the other party by its issuance and the other party should be able to use this right and applies it. So offeror doesn’t have the right of withdrawal and in the case of withdrawal his offer is not revoked.

Revocation of firm offer in Iran’s civil law

Generally the regulations of civil law are conventions and formalities and usually legislators sign these convention and customs except those that are inappropriate. Jurisconsults say: the application of establishment in transaction is improbable. So, signatory nature of transactions is inferred. Article 10 of Iran’s civil law has expanded these kinds of convention and formalities in the contracts. According to this we can refer to the article 10 of civil law about firm offer, whether we justify the theory of firm offer based on the theory of one sided will or based on "pre contract". Because in our legal texts, no imperative rule is not opposed to this theory, It may be said that: If we justify the theory of firm offer based on one sided will, It won’t be possible to refer to the Article 10 of civil law, since the above contract in Article 10 of civil law is not verified by commitments of one-sided will. So there is no reason for obligatory aspect of offer. To answer this we can say that: the criterion of Article 10 of civil law is to respect the people will, so its criterion includes commitments arising from one-sided will and unilateral obligations. But it seems that expurgation of definite criterion of Article 10 is difficult and we cannot refer to it. The expansion of “contract” concept in Article 10 of civil law and its inclusion toward one sided will is against its conventional presentation. If we correct the obligation to offer based on the theory of preliminary contract and know the initial commitments as obligatory ones, it is possible to accept firm offer and Iran’s civil law according to Article 10 recognizes the correctness and necessity of preliminary commitments.

Firm offer in international commerce

Difference in various legal systems about the power of firm offer has numerous effects on unitary efforts.
First clause: Revocation of firm offer in international convention of commodity on sale.
In the hypothesis that offer is received by the addressee, the offer should able to be withdrawn, the ability to withdraw in this hypothesis depends on 2 terms:1-the letter of withdrawal should be send to him before the addressee sends his acceptance.2-offer can be withdrawn.
According to the clause 2 of Article 16 of convention, offer which is received by the addressee cannot be withdrawn in these cases:
  a- It is notified that offer cannot be withdrawn whether obviously or implicitly, for example, a time is specified for the acceptance which shows that offer cannot be withdrawn during that time.
  b- The trust of addressee of offer is reasonable as an offer which cannot be withdrawn and acts according to this.
Revocation of firm offer in the principles of international commercial contracts

Clause 2 of Article 2-1-3 of international commercial contract is about offers which cannot be withdrawn and they are considered in 2 forms:
(1) When in offer’s text, there is a subject about the fact that offer cannot be withdrawn
(2) When the addressee of offer acts in spite of having suitable reasons for offer by referring to it.
A) The offer which cannot be withdrawn: we can state this fact indifferent ways. The most direct and obvious way is the clear statement of mentioned effect from the offeror. Nevertheless, the above subject can be understood simply from other statements or the behavior of offeror. Specifying a definite time for the acceptance, is an implied implication on offer which cannot be withdrawn in a specific time; but it is not necessarily so.
B) The addressee’s emphasis of offer on the offer which cannot be withdrawn

The second exception on the general rule about the offer which cannot be withdrawn is the application of general rule of the prohibition of disharmonic behavior which is specified in the Article 1-8 i.e. the case in which it is logical for the addressee of offer to emphasis on the offer which cannot be withdrawn and ((addressee of offer acts on the emphasis of offer)). The addressee of offer’s reliance on the offer which cannot be withdrawn maybe the result of offeror or the nature of offer itself. The actions that the addressee of offer has done can include preparing production’s arrangements, buying or renting building materials or equipment, sustaining costs, etc. with this condition that in the aforementioned commerce, the actions can be treated as normal; otherwise, offeror should predict it or be aware of it.

Conclusion

Offer cannot be unilateral obligation and we know it as the interpretation of offeror’s will, since, offeror doesn’t have the intention of creating independent legal nature that can be the source of effect by itself. About the revocation possibility of offer, we can say that in our law, offeror has the right of revocation of offer and we cannot demand loss just because of withdrawal unless:
1. During offer, offeror obligates himself, however commitment of this kind is an exceptional fact, but social interests of life and economical necessities of time justifies this commitment and its necessity however. We should be careful that the appearance and the origin agree with non-existence of one-sided commitment unless opposite of it and the existence of one sided commitment about this is proved.
2. Offeror gives an implied suggestion based on keeping the offer (specifying the time is a common means of this suggestion); and this suggestion is accepted by the addressee of offer (in this regard, we should account silence as acceptance). This pre contract due to the principle of freedom (Article 10) was a dominant contract and the obligation of offeror to keep the offer is also the result of this source. We saw in this case that offeror doesn’t have the intention to oblige himself and the principle is also this; unless, the opposite of this sense is proved. Finally, we point that although offeror has the right to revoke offer but no offeror should not suppose his place of implementation absolutely and ignores other’s right. Also, offeror should not abuse the application of this right and commits a crime; otherwise according to the public rules of civil responsibility, he is declared responsible to compensate that person for his loss.
3. In Iran’s law ad Islamic jurisprudence there is no reason on the validity of firm offer and juristconsults know the revocation of offer before the acceptance as an actuality and don’t recognize the triple principles of firm offer applicable. While, in public jurisprudence, Maleki juristconsults accepted the theory of firm offer. Furthermore according to the Imam Khomeini’s viewpoint it seems that belief in the widespread role for offer doesn’t have accompanied with the acceptance of the theory of firm offer and some of Imam’s comments are the reasons for his agreement with the famous theory about the correctness of revocation of offer before the acceptance. Nevertheless, some juristconsults know la zarar (no loss) rule in the realm of decree proving applicable. According to this, we can consider this rule as a basis for the theory of firm offer. Furthermore, for those who declare Ghorar rule as the authentic basis in decree, this rule can be presented as a reason for the validity of firm offer’s theory.

4. In Iran’s law according to the public rule, the essence of offer doesn’t create the obligation, because the contract is done by the agreement of the two parties’ will and one sided will is not practically obligatory (Article 183 of civil law). So, there is no doubt that offer is reclaimable as long as the addressee receives it. After being received by the addressee, offer can be withdrawn until the address declares his acceptance and recognized it as the offer which cannot be withdrawn for a specific time, whether it is clear or implied. In this case offer cannot be withdrawn. Therefore, in revocation of offer, Iran’s law coordinates with convention and institution’ principles. Because, based on convention and institution, offer can be practically withdrawn and in convention if time is specified for it or it has obligation, it cannot be withdrawn. In institution’s principles there are 2 exceptions for this rule. 1. when in the context of offer, there is a subject about offer which cannot be withdrawn 2. when the addressee of offer acts in spite of having other suitable reasons for the offer that cannot be withdrawn. The difference between Iran’s law and convention is that in Iran’s law offer can be withdrawn up to the formation of contract; but in convention and institution’s principles offeror can not withdraw of offer from the time of acceptation and offer becomes dominant when it is received by the addressee. Although the contract is formed by receiving the acceptation to the offeror, the ambiguous subject of Iran’s law about the revocation possibility of offer and not mentioning this fact in the regulations is not good. Specially, inaccessible juridical procedures of our country don’t help us to solve this problem. So it is necessary that the judicature prescribes some rules about whether there is a possibility of revocation in firm offer or not so that the courts know their duty when they face with such cases. So it is suggested that an Article is allocated to this in the form of one single legal Article in the public rules of contracts and specifies the possibility of revocation or revocation of offers which are created obligatory.
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